IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 103 of 1995
with
CRIMINAL APPEAL No 225 of 1995
with
CRIMINAL APPEAL No 226 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABABHAI HUSENBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 103 of 1995
MR EE SAIYED for appellant
MRS HANSA B PUNANI,APP for Respondent No. 1

2. Criminal AppealNo 225 of 1995
MRS HANSA B PUNANI, APP for appellant
MR EE SAIYED for Respondent No. 1

3. Criminal AppealNo 226 of 1995
MRS HANSA B PUNANI, APP for appellant
MR EE SAIYED for Respondent Nos.1 to 19

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/01/2001

COMMON ORAL JUDGMENT

(Per: MR.JUSTICE M.H.KADRI)

Criminal Appeal No.103 of 1995 is filed by the appellant-original accused No.1 against the judgment and order dated January 24, 1995 passed by the learned Addl. Sessions Judge, Mehsana by which judgment the appellant came to be convicted for offences punishable under Secs.147, 148 and 149 read with Sec.307 IPC and under Sec.25(1)(b)(a) of the Arms Act, 1959. That the sole appellant-Bababhai Husainbhai Pathan expired on March 18, 2000 and hence, the Criminal Appeal No.103 of 1995 finally abates under Sec.394(2) of the Code of Criminal Procedure and no near relative of the deceased-appellant within 30 days of the death has applied to continue the appeal. Hence, this appeal finally abates and stands disposed accordingly.

2. Criminal Appeal No.225 of 1995 is filed by the appellant-State of Gujarat for enhancement of sentence imposed on the original accused No.1. Now since the deceased respondent-Bababhai Husainbhai Pathan, the sole respondent against whom the State of Gujarat has filed Criminal Appeal No.225 of 1995 has died on March 18, 2000, the appeal finally abates under Sec.394(2) of the Code of Criminal Procedure. Hence, this appeal also stands disposed accordingly.

3. Criminal Appeal No.226 of 1995 is filed by the State of Gujarat under Sec.378 of the Code of Criminal Procedure challenging the judgment and order of acquittal dated January 24, 1995 recorded by the learned Additional Sessions Judge, Mehsana in Sessions Case No.197 of 1992 wherein the respondent Nos.1 to 19 i.e. original accused Nos.2 to 20 came to be acquitted from the charges framed against them under Secs.143, 144, 147, 148, 149, 323, 324, 307, 336 and 337 of the Indian Penal Code and under Sec.25(1)(b)(a) of the Arms Act, 1959. Learned advocate for the respondents, Mr.E.E.Saiyed, has produced death certificate of respondent No.2-Pathan Navajkhan Salekhan which indicates that said respondent No.2 expired on August 13, 1996. Learned advocate for the respondents has also produced death certificate of respondent

No.9-Pathan Idalkhan Samankhan which indicates that said respondent No.9 expired on September 18, 1996. The above death certificates had been got verified by learned APP, Mrs.Hansa B. Punani through the investigating agency and the factum of the death of two respondents has been found to be correct. In view of the above facts, the appeal against the acquittal of respondent Nos.2 and 9 stands finally abated under the provisions of Sec.394(2) of the Code of Criminal Procedure.

4. On January 21, 1992 around 12 noon, original accused Nos.2 to 20 along with original accused No.1-deceased Bababhai Husainbhai Pathan, who were armed with deadly weapons, had formed unlawful assembly with an intention to launch an assault on the shepherds of Village Della, Taluka Kadi. As per the prosecution case, the original accused No.2 Bababhai Husainbhai was armed with gun and had caused injury to Jamuben. The prosecution case further reveals that Alefkhan Nasirkhan, the respondent No.8 herein and deceased-respondent No.9, Idankhan Samankhan were armed with country made tamancha and had fired at the shepherds of the said Village. The prosecution case further reveals that other respondents were armed with mow and arrows, dharias and other deadly weapons and had caused injuries on the shepherds so as to endanger their lives. After the incident, Vashrambhai Chhaganbhai Bharwad had lodged complaint at Bavlu Police Station which was registered as Crime Register No.I-3 of 1992 at Bavlu Police station. Investigation of the above offence was carried out by P.W.21, PSI, Mr.G.B.Zala. P.W.21, PSI, Mr.G.B.Zala carried out the investigation and arrested all the respondents and the original accused No.2-Bababhai Husainbhai and recovered muddamal weapons at the instance of some of the respondents. On completing the investigation, P.W. 21, PSI,Mr.G.B.Zala submitted charge-sheet against all the respondents and the original accused No.1-Bababhai Husainbhai in the Court of Judicial Magistrate (First Class) at Kadi. As the offence under Sec.307 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate (First Class), Kadi committed the said case to the Court of Sessions at Mehsana for trial which came to be numbered as Sessions Case No.197 of 1992.

5. Charge Ex.32 was framed against the respondents and the orginal accused No.2-Bababhai Husainbhai for the offences punishable under Secs.143, 144, 147, 148, 149, 307, 323, 324, 336, 337 IPC and Sec.25(1)(b) of the Arms Act, 1959. To prove the charge framed against the respondents and the orginal accused No.2-Bababhai Husainbhai, prosecution had examined following witnesses:

P.W.1-Vashrambhai Chhaganbhai Bharwad Ex.57; P.W.2-Bhikhabhai Jahangirbhai Ex.58; P.W.3-Karnabhai Somabhai Ex.60; P.W.4-Hitendra Madabhai Parikh Ex.62; P.W.5-Madabhai Bhojabhai Bharwad Ex.67; P.W.6-Vaghabhai Bhojabhai Bharwad Ex.68; P.W.7-Rahmatkhan Punjikhan Pujakhan Ex.69; P.W.8-Dr.Manish Rameshbhai Shah Ex.72; P.W.9-Rajkumar Govindlal Trivedi Ex.75; P.W.10-Januben Baldevbhai Ex.77; P.W.11-Alabhai Virambhai Bharwad Ex.78; P.W.12-Imambhai Jivabhai Ex.80; P.W.13-Habibkhan Umarkhan Pathan Ex.81; P.W.14-Ayubkhan Hajaratkhan Pathan Ex.82; P.W.15-Thakor Sadaji Juvaji Ex.83; P.W.16-Sureshkumar Kulshankar Joshi Ex.84; P.W.17-Valikhan Sabatkhan Ex.85; P.W.18-Hamidkhan Bhaikhan Ex.86; P.W.19-Soma Ruda Bharwad Ex.88; P.W.20-Nivanlal Karsanbhai Ex.89 and P.W.21-Investigating Officer, PSI, G.B. Zala. The prosecution also produced documentary evidence such as complaint, panchnama of scene of offence, injury certificate of witness Januben, X-ray report, recovery panchnama of muddamal article, entries in Station Diary of Bavlu Police Station, report of FSL, etc. to prove the case against the respondents and original accused No.1.

6. Learned Addl. Sessions Judge on appreciation of oral as well as documentary evidence has convicted the original accused No.1-Bababhai Husainbhai for offences punishable under secs.147, 148, 149 read with Sec.307 IPC and under Sec.25(1)(a) of Arms Act and sentenced him for R.I. for 4 years and fine of Rs.2,000/- in default, R.I. for 3 months for offences punishable under Secs.147, 148, 149 read with Sec.307 IPC. Learned Addl. Sessions Judge also convicted the original accused No.1-Bababhai Husainbhai for offence under Sec.25(1)(a) of Arms Act and sentenced him to suffer R.I. of one year and fine of Rs.1,000/- in default, R.I. for one month. Learned Addl. Sessions Judge acquitted the original accused Nos.2 to 20 from the charges framed against them by giving them benefit of doubt which has given rise to file this appeal against the order of acquittal of original accused Nos.2 to 20.

7. Learned APP, Mrs.Hansa B. Punani and learned advocate Mr.E.E.Saiyed have taken us through the entire record and proceedings of the appeal. Learned APP has submitted that learned Addl. Sessions Judge has erred in not appreciating the evidence of injured witnesses which had proved the involvement of the present respondents that they, by forming an unlawful assembly, had launched assault on the shepherds of Village Della by deadly weapons. Learned APP has further submitted that the appreciation of oral as well as documentary evidence by

learned Addl. Sessions Judge was illegal and perverse and, therefore, the order of acquittal be reversed and the present appeal be allowed.

8. On the other hand, learned advocate for the respondents has vehemently submitted that the learned Addl. Sessions Judge has given cogent and convincing reasons more particularly in para 12 of the impugned judgment in acquitting the respondents-original accused Nos.2 to 20 from the charges framed against them. Learned advocate for the respondents has further submitted that this being an acquittal appeal the Court should be slow in interfering with the order of acquittal recorded by the learned Addl. Sessions Judge unless it suffers from serious infirmity or the findings are perverse or illegal.

9. Having gone through the oral as well as documentary evidence and the submission of learned advocates for the parties, we are of the opinion that the learned Addl. Sessions Judge has given cogent and convincing reasons based on proper appreciation of evidence in acquitting the respondents from the charges framed against them. No cogent and reliable evidence were produced by the prosecution at the trial implicating the respondents with the charges framed against them. Since we are confirming the findings recorded by the learned Addl. Sessions Judge, we are not reiterating the said findings in our judgment. Learned APP has not been able to point out any infirmity or illegality from the impugned judgment so as to call for our interference in this appeal which is filed against the order of acquittal.

10. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence and the learned Judge who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince me to take the view contrary to the one already taken by the learned

Judge. Therefore, the acquittal appeal deserves to be rejected.

11. For the reasons recorded in the common oral judgment, Criminal Appeal No.103 of 1995 filed by the appellant-Bababhai Husenbhai Pathan against the judgment and order dated 24-1-1995 passed by the learned Addl. Sessions Judge, Mehsana in Sessions Case No.197 of 1992 stands abated.

12. Criminal Appeal No.225 of 1995 filed by the appellant-State against the judgment and order of conviction dated 24-1-1995 passed by the learned Addl. Sessions Judge, Mehsana in Sessions Case No.197 of 1992 also stands abated.

13. Criminal Appeal No.226 of 1995 filed by the appellant-State against the judgment and order of dated 24-1-1995 passed by the learned Addl. Sessions Judge, Mehsana in Sessions Case No.197 of 1992 stands dismissed.

(M.H.KADRI,J.)

(R.P.DHOLAKIA,J.)
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